

§ 120.880

(b) Third-party loan proceeds used to renovate the leased space do not count towards the 504 first mortgage requirement or the Borrower's contribution.

LOAN-MAKING POLICIES SPECIFIC TO 504 LOANS

§ 120.880 Basic eligibility requirements.

In addition to the eligibility requirements specified in subpart A, to be an eligible Borrower for a 504 loan, a small business must:

(a) Use the Project Property (except that an Eligible Passive Company may lease to an Operating Company); and

(b) Together with its affiliates, meet one of the following size standards:

(1) It does not have a tangible net worth in excess of \$6 million, and does not have an average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years in excess of \$2 million; or

(2) It meets the size standards in part 121 of this chapter for the industry in which it is primarily engaged.

§ 120.881 Ineligible Projects for 504 loans.

In addition to the ineligible businesses and uses of proceeds specified in subpart A of this part, the following Projects are ineligible for 504 financing:

(a) Relocation of any of the operations of a small business which will cause a net reduction of one-third or more in the workforce of a relocating small business or a substantial increase in unemployment in any area of the country, unless the CDC can justify the loan because:

(1) The relocation is for key economic reasons and crucial to the continued existence, economic wellbeing, and/or competitiveness of the applicant; and

(2) The economic development benefits to the applicant and the receiving community outweigh the negative impact on the community from which the applicant is moving; and

(b) Projects in foreign countries (loans financing real or personal property located outside the United States or its possessions).

13 CFR Ch. I (1-1-00 Edition)

§ 120.882 Eligible Project costs for 504 loans.

Eligible Project costs which may be paid with the proceeds of 504 loans are:

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan):

(1) To acquire land used in the Project prior to applying to SBA for the 504 loan; or

(2) For any other expense toward a Project within nine months prior to receipt by SBA of a complete loan application, unless the time limit is extended or waived by SBA for good cause;

(b) In Projects involving construction, a contingency reserve for cost overruns not to exceed 10 percent of construction cost;

(c) Professional fees directly attributable and essential to the Project, such as title insurance, architecture, engineering, accounting, environmental studies, and legal fees (other than legal fees associated with the closing); and

(d) Repayment of interim financing including points, fees and interest.

§ 120.883 Eligible administrative costs for 504 loans.

The following administrative costs are not part of Project costs, but may be paid with the proceeds of the 504 loan and the Debenture (see § 120.971):

(a) SBA guarantee fee;

(b) Funding fee (to cover the cost of a public issuance of securities and the Trustee);

(c) CDC processing fee;

(d) Borrower's out-of-pocket costs associated with the closing of the 504 loan (other than legal fees);

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of \$2,500; and

(f) Underwriters' fee.

[64 FR 2118, Jan. 13, 1999]

§ 120.884 Ineligible costs for 504 loans.

Costs not directly attributable and necessary for the Project may not be paid with proceeds of the 504 loan. These include, but are not limited to, the following:

Small Business Administration

§ 120.910

(a) Debt refinancing (other than interim financing).

(b) Third-Party Loan fees (commitment, broker, finders, origination, processing fees of permanent financing).

(c) Ancillary business expenses, such as:

(1) Working capital;

(2) Counseling or management services fees;

(3) Incorporation/organization costs;

(4) Franchise fees; and

(5) Advertising.

(d) Fixed-asset Project components, such as:

(1) Short-term equipment, furniture, and furnishings (unless essential to and a minor portion of the Project);

(2) Automobiles, trucks, and airplanes; and

(3) Construction equipment (except for heavy duty construction equipment integral to a business' operations and meeting the IRS definition of capital equipment).

[61 FR 3235, Jan. 31, 1996, as amended at 64 FR 2118, Jan. 13, 1999]

INTERIM FINANCING

§ 120.890 Source of interim financing.

A Project may use interim financing for all Project costs except the Borrower's contribution. Any source (including a CDC) may supply interim financing provided:

(a) The financing is not derived from any SBA program, directly or indirectly;

(b) The terms and conditions of the financing are acceptable to SBA;

(c) The source is not the Borrower or an Associate of the Borrower; and

(d) The source has the experience and qualifications to monitor properly all Project construction and progress payments. (If the source lacks such experience or qualifications, SBA may require the interim loan to be managed by a third party such as a bank or professional construction manager.)

§ 120.891 Certifications of disbursement and completion.

Before the Debenture is issued, the interim lender must certify the amount disbursed. The CDC must cer-

tify that the Project was completed in accordance with the final plans and specifications (except as provided in § 120.961).

§ 120.892 Certifications of no adverse change.

Following completion of the Project, the following certifications must be made before the 504 loan closing:

(a) The interim lender must certify to the CDC that it has no knowledge of any unremedied substantial adverse change in the condition of the small business since the application to the interim lender;

(b) The Borrower (or Operating Company) must certify to the CDC that there has been no unremedied substantial adverse change in its financial condition or its ability to repay the 504 loan since the date of application, and must furnish interim financial statements, current within 90 days of closing; and

(c) The CDC must issue an opinion to the best of its knowledge that there has been no unremedied substantial adverse change in the Borrower's (or Operating Company's) ability to repay the 504 loan since its submission of the loan application to SBA.

PERMANENT FINANCING

§ 120.900 What are the sources of permanent financing?

Permanent financing for each Project must come from three sources: the Borrower's contribution, Third-Party Loans, and the 504 loan. Typically, the Borrower contributes 10 percent of the permanent financing, Third-Party Loans 50 percent and the 504 loan 40 percent.

THE BORROWER'S CONTRIBUTION

§ 120.910 How much must the Borrower contribute?

(a) The Borrower must contribute to the Project cash (or property acceptable to SBA obtained with the cash) or land (that is part of the Project Property), in an amount equal to the following percentage of the Project cost, excluding administrative costs: